IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06/03/2004

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No. 4938 of 1994
and
W.P.M.P.No. 7815 of 1994

P. Kalyani. .. Petitioner.

-Vs-

1. State of Tamil Nadu,
represented by Secretary to
Government, Home Department,
Fort St. George, Madras-9.

2. District Collector,
Villupuram R.P.District,
Villupuram.

3. Superintendent of Police,
Villupuram R.P. District,
Villupuram.

4. Inspector of Police,
Tindivanam Police Station,
Tindivanam, Villupuram R.P.District.

5. R. Panneerselvam. .. Respondents.

Writ Petition is filed under Article 226 of the Constitution of India,
for issuance of a Writ of Certiorarified Mandamus, as stated therein.

Mr. P. Rathinam:- For petitioner.

^Mr. N.R. Chandran, Advocate General
assisted by Mr. S. Kandasamy, Spl.Govt.,Pleader:For R1 to R4.

Mr. R. Muthukumarasamy:- For 5th Respondent.

:ORDER

The petitioner by name P. Kalyani has filed the above writ petition to quash the records in Crime No. 69 of 93 on the file of Inspector of Police, Tindivanam Police Station, Villupuram District and the First Information Report in the said Crime Number dated 26 -1-93 by issuance of a Writ of Certiorari and direct the first respondent-Government of Tamil Nadu to pay reasonable amount as compensation by way of Writ of Mandamus.

2. The case of the petitioner is briefly stated hereunder: Initially he joined as Demonstrator in Physics in 1969 in the Education Department of Government of Tamil Nadu and was posted in the Agricultural College, Madurai. He was upgraded as Assistant Professor in Physics on 1-12-77. While he was working in the Government Arts College, Villupuram, he was transferred to A. Govindasamy Government Arts College, Tindivanam in January, 1981 and continues to work in the said college. The local police foisted a false case against him on 26-01-93 and harass and terrorise him as he involved in helping the people who are victims of various injustice in and around Tindivanam. He himself involved in many social activities and human rights violations and fought against Government departments particularly police department. He involved in various agitations/organisations arranged for students. He was arrested on 27-1-93 at about 4.15 a.m. by the then Inspector of Police, Tindivanam. A group of policemen consisting of more than 20 were present at the time of his arrest and he was taken to Olakkur Police Station which is 10 k.m. away from Tindivanam. The police officer was not willing to disclose the grounds and reason for his arrest. He was taken to Tindivanam and produced before the Judicial Magistrate No.I by the 4th respondent at about 5.15 P. M. on 27-01-1993. There was a large crowd in and around the court premises. He was taken to the court room at about 7.30 P.M and the learned Magistrate passed an order remanding him to custody. He was directed to be produced on the next day. Immediately, he was taken to Olakkur Police Station and he was kept in the night on 27-01-93. Thereafter he was produced before the Magistrate at about 2 P.M. on 28-01-9 3 with a second remand application adding Section 7 (1) (a) of the Criminal Law Amendment Act. He was remanded to judicial custody till 11 -02-93. After getting an order of bail, he was released at about 5.3 0 P.M. on 28-1-93. He came to know that one P. Panneerselvam, 5th respondent made a complaint against him as if he was making some statements to the students instigating them to commit certain offences.

The first information report reveals that the said complaint was made at 23.00 hours to the police on 26-01-1993 and the same was registered in Crime No. 69/93 under Section 13 of the Unlawful Activities ( Prevention) Act, 1967. The said allegation reveals that he was instigating students and others near the bus-stand near Gandhi statue near the municipal office for 4 days prior to the complaint. The alleged first information report is a concocted document and the police had utilised the co-operation of the 5th respondent to create such a false complaint against him only to harass him and to give a warning signal to others who are active in exposing the misdeeds of the Police in Tindivanam. Though the 5th respondent claims to be an office bearer of Dr. Ambedkar Mandram, he is well-known bootlegger in Tindivanam Town. The 5th respondent became the tool of the 4th respondent for harassing him by implicating him in a false case. The first information report in Crime No.69 of 93 is a concocted document and the same was created on mala fide intention of the 4th respondent and his associates. Further, the author of the said first information report, namely, 5 th respondent is a known bootlegger. The first information report was created to take vengeance against the petitioner who is a forerunner and fighting for the cause of the students.

3. Pursuant to the Rule Nisi, the Joint Secretary to the Government, Home Department, has filed a counter affidavit on behalf of respondents 1 to 4 disputing various averments made by the petitioner. It is stated that the petitioner is a chuvanist instigating the Dalit and downtrodden community often to agitate against the Government. He is not a social worker and not a member of any service organisation. He came to adverse notice of the police on several occasions. The police never abused their power as claimed by the petitioner. The petitioner mischievously uses the circumstances that had prevailed at Tindivanam due to the students agitation. The petitioner is not an innocent or ignorant of his rights on detention. The petitioner was fully aware of the cause of his arrest. The complaint of Panneerselvam made out a cognizable offence and the respondents had to register and investigate the case. The perusal of the complaint of Panneerselvam is a matter which has to be decided by the Court of law and not the investigating agency. The case of the petitioner is still under investigation. The present investigation is also being hampered due to the release of the petitioner on bail as the witnesses are afraid that the petitioner may trigger his hirelings in case they support the prosecution. This is the main reason for pendency of investigation of Crime No.69/93. The petitioner is not entitled to any relief in this writ petition.

4. When the writ petition came up for hearing on 17-6 -2002, a learned Judge of this Court, considering the nature of the contentions raised by both parties, called for a report from the third respondent-Superintendent of Police, Villupuram District. He also directed the third respondent to personally enquire into the complaint by examining the complainant/5th respondent as well as the writ petitioner and other witnesses, if necessary and to file detailed report of his prima facie conclusion within a period of eight weeks. Pursuant to the said direction, the Superintendent of Police, Villupuram District/ third respondent herein filed a report on 15-8-2002. A

perusal of the report shows that as per the direction of this Court, the Superintendent of Police examined the complainant/5th respondent herein, the writ petitioner, the investigation officer and other witnesses on 25-7-2002, 6-8-2002 and 8-8-2002 at his office at Villupuram. It is further seen that the complainant/5th respondent appeared before him on 25-7-2002 and submitted a signed statement. As per the statement of the 5th respondent, he did not give any complaint in the year 199 3. He further stated that he has not given any statement either before the Sub Inspector of Police or before any police officer. He further added that he never lodged or signed any complaint before the Tindivanam Police Station. Besides examining the complainant, the Superintendent of Police has also examined the then Sub Inspector of Police P. Suyambu on 25-7-2002. He submitted that the 5th respondent along with 4 or 5 persons came to Tindivdnam Police Station on 26-1-93 and submitted a written complaint against the writ petitioner P. Kalyani. He further stated that on the basis of the complaint given by the 5th respondent, he had registered a case in Crime No.69/93 under Section 13 of Unlawful Activities (Prevention) Act, 1967 and sent the first information report to the Judicial Magistrate, Tindivanam. He also forwarded a copy of the first information report directly to Nachimuthu, the then Inspector of Police for investigation. It is further seen that on 6-8-2002 the Superintendent of Police examined the writ petitioner Kalyani at his office and he also furnished a signed statement. As per the statement of the petitioner, the police have foisted a case by instigating the 5th respondent Panneerselvam to lodge a complaint on 26-1-93. On 8-8-2002 the Superintendent of Police examined one Murthy, the brother-in-law of the 5th respondent in his office and recorded a statement which was duly signed by the said Murthy. He further stated that he did not know anything about the complaint dated 26-1-93. He further denied that police instigated the 5th respondent/Panneerselvm to lodge a complaint against the writ petitioner. On the same day i.e., on 8-8-2002 he examined Nachimuthu, the then Inspector of Police, Tindivanam at his office. He gave a statement which was also duly recorded by him and signed by Nachimuthu. He has stated that on 26-1-93 at about 11 P.M. the Sub Inspector of Police forwarded a copy of the first information report in Crime No. 93/93 in person. He took up the matter for investigation and, according to him, the 5th respondent gave a statement under Section 161 (3) Cr.P.C. Besides examining Panneerselvam, one Erusan was also examined by the said Nachimuthu and a statement was obtained from him. Nachimuthu further stated that the petitioner was arrested and he was remanded by the Judicial Magistrate, Tindivanam. After analysing the statement of the writ petitioner, the complainant, the then Inspector of Police, etc., the Superintendent of Police addressed the Judicial Magistrate-No.I, Tindivanam to send the original complaint which contains the signature of the 5th respondent-Panneerselvam to the Additional Director, Forensic Laboratory, Chennai for comparing the signature contained in the complaint dated 26-1-93 of the 5th respondent with that of the specimen signature taken by his subordinates in his presence so as to enable him to ascertain the genuineness of the signature of the 5th respondent. He received the report of the Assistant Director of Forensic Laboratory, Chennai on 12-8-2002. In the report the Assistant Director of Forensic Laboratory, Chennai has opined that the person who signed the specimen signature has only signed the questioned signature. The Superintendent of Police has concluded that the signature of the 5th

respondent-Panneerselvam which is on the original complaint has matched with the specimen signatures taken from him on 25-7-2 002 by his subordinates in his presence. With the recording of these statements from the petitioner, complainant, Inspector of Police and the report of the Assistant Director of Forensic Laboratory dated 12-8-2002, the Superintendent of Police has come t o a conclusion that on the complaint of the 5th respondent on 26-1-93, the Sub Inspector of Police had registered a case and that prima facie case has been made out against the writ petitioner-P. Kalyani.

5. With these facts and materials, let me consider whether there is any ground for quashing the first information report in Crime No.69/93 on the file of the Tindivanam Police Station.

6. Mr. P. Rathinam, learned counsel for the petitioner, after taking me through the various factual details furnished in the affidavit with regard to the various incidents said to have taken place in Villupuram District, the inconvenience caused to the petitioner at the hands of the 4th respondent police and after referring to various decisions, would contend that the petitioner has made out a prima facie case for quashing the first information report and also entitled compensation for the same. On the other hand, Mr. N.R. Chandran, learned Advocate General appearing for respondents 1 to 4, would contend that in the light of the detailed report of the Superintendent of Police, which was made pursuant to the direction of this Court and inasmuch as prima facie case has been made out against the petitioner, interference by this Court at this stage is not warranted. He also submits that the respondents are ready to complete the investigation and file a report before the appropriate court within the time to be prescribed by this Court.

7. I have carefully considered the rival contentions.

8. The petitioner seeks to quash First Information Report in Crime No.69 of 93 on the file of Inspector of Police, Tindivanam Police Station. No doubt, in the affidavit the petitioner has cited various instances to show that he participated in many agitations and involved himself for the cause of the students, down-trodden and highlighted human right violations. Though the respondents 1 to 4 have denied those statements, I am of the view that it is unnecessary for this Court to refer those factual details for the disposal of the writ petition. It is made clear that this Court is not underestimating the academic qualification and the present position of the petitioner. The main issue is, whether the impugned First Information Report dated 26-1-1993 discloses cognizable offences for proceeding further or not? Inasmuch as this Court by order dated 17-6-2002, directed the Superintendent of Police, Villupuram District/third respondent herein, to enquiry into the allegations/contentions raised by both parties and submit a report, I am of the view that the matter is simplified and there is no need to probe further by this Court. The report of the Superintendent of Police is before this

Court. I have already extracted the details regarding his report and the ultimate conclusion which reads as under:

"11. Hence, it is clear that the 5th respondent Tr. Panneerselvam has lodged a signed complaint on 26-1-1993. Now he has given a false statement before me on 25-7-2002 with ulterior motive. So I have come to conclusion that only on the signed complaint given by 5 th respondent Tr. Panneerselvam on 26-1-93 the Sub-Inspector of Police Tr. P. Suyambu has registered a case and Inspector of Police Tr. Nachimuthu has taken up the investigation and recorded 161 Cr.P.C statements as per the provisions of Criminal Procedure Code.

12. So, I humbly conclude that prima facie case has been made out against writ petitioner Tr. P. Kalyani."

Inasmuch as this Court called for a report from the highest police officer of the District, namely, Superintendent of Police, who, in compliance of the same, submitted a report, I am of the view that the matter has to be agitated only before the concerned Court having criminal jurisdiction. This Court is not expected to express its view at this stage, since it is a premature stage and it is for the competent Criminal forum to decide the issue one way or other depending on the materials to be placed. Had it been no report by the Superintendent of Police regarding the complaint of the 5th respondent, plea of the petitioner, enquiry by the 4th respondent, it would be possible for this Court to go into the genuineness of the same and arrive a conclusion. However, in view of the factual conclusion of the officer concerned, that too pursuant to the direction of this Court, as observed earlier, it would be appropriate for the Criminal forum to decide the issue one way or other in the manner known to law, after affording opportunity to both parties. In this regard, learned Advocate General has very much pressed into service the

following passage of the decision of the Honourable Supreme Court in Union of India Vs. Prakash P. Hinduja and another, reported in 2003 (4) Supreme 466: (para 11)

"19. Thus the legal position is absolutely clear and also settled by judicial authorities that the Court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the First Information Report till the submission of the report by the officer in charge of police station in court under Section 173 (2) Cr.P.C., this field being exclusively reserved for the investigating agency."

9. In the light of the decision of the Supreme Court, and in view of the report of the Superintendent of Police, Villupuram District, which was made pursuant to the direction of this Court, and also of his conclusion that there is a prima facie case to proceed against the writ petitioner, the same

cannot be interfered by this Court at this juncture. The respondents 1 to 4 are directed to file final report before the appropriate Criminal Court having jurisdiction within a period of six months from the date of receipt of a copy of this order. After filing of final report, it is for the said Court to consider and dispose of the same in accordance with law expeditiously. With the above observation, the Writ Petition is disposed of. No costs. Consequently, connected W.P.M.P., is closed.

R.B.
Index:- Yes.
Internet:- Yes.
To:
1. The Secretary, Government of Tamil Nadu, Home Department, Fort St. George, Madras-9.

2. District Collector, Villupuram R.P.District, Villupuram.

3. Superintendent of Police, Villupuram R.P. District, Villupuram.

4. Inspector of Police, Tindivanam Police Station, Tindivanam, Villupuram R.P.District.